

EL 85-4450/1

Office of Legislative Liaison

Routing Slip

TO:	ACTION	INFO
1. D/OLL		✓
2. DD/OLL		✓
3. Admin Officer		
4. Liaison		
5. Legislation		X
6. <i>B</i>		X
7. <i>B</i>		X
8.		
9.		
10.		

SUSPENSE

Date

Action Officer:

Remarks:

Gina/13 Dec 85
Name/Date

EXECUTIVE SECRETARIAT**ROUTING SLIP**

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI		X		
2	DDCI		X		
3	EXDIR		X		
4	D/ICS		X		
5	DDI		X		
6	DDA		X		
7	DDO		X		
8	DDS&T		X		
9	Chm/NIC				
10	GC		X		
11	IG				
12	Compt		X		
13	D/OLL		X		
14	D/PAO		X		
15	D/PERS				
16	VC/NIC				
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		SUSPENSE _____ Date			

Remarks

12 DEC 85

Date

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**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

Executive Registry

85- 4450/1

December 9, 1985

M-86-5

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: James A. Baker III
Director

SUBJECT: Actions You Must Take in the Event of an
Appropriations and/or Debt Ceiling Hiatus This
Week

Once again, unless the Congress of the United States takes appropriate action in the next few days to raise the debt ceiling and resolve appropriations problems, the United States Government will be faced with one of three extraordinary situations that will require your immediate attention.

The possible situations are:

- (1) a continuing resolution or appropriations bill for your agency has been enacted, but Congress has not acted to raise the current debt ceiling; or
- (2) the statutory debt ceiling has been raised, but no continuing resolution or appropriations bill for your agency has been enacted (only three out of thirteen appropriations bills have been signed by the President thus far); or
- (3) neither a continuing resolution nor appropriations for your agency has been enacted, nor has Congress acted to raise the current debt ceiling.

Since early October, Congress has had measures before it that would resolve both the debt ceiling and appropriations/continuing resolution problems. Although Congress enacted temporary legislation in mid-November to avoid the imminent expiration of these deadlines, Congress has thus far been unable to agree on longer-term solutions. Therefore, we have concluded reluctantly that it is necessary to inform you again of the steps that you must take if Congress fails to take necessary action.

The steps required for each of these situations are summarized below:

1. Congress Has Enacted a Continuing Resolution or Appropriations Act for Your Agency, But Has Not Enacted an Increase in the Debt Ceiling.

On November 14th, Congress passed and the President signed Public Law 99-155, which temporarily increased the debt ceiling by \$80 billion for a limited period of time. The Secretary of the Treasury has concluded that the government will have enough cash on hand to meet its obligations through December 11th. On December 12th, however, unless there is an increased debt limit, the government will default on its obligations.

As set forth in my Memorandum of November 13th, the policies you should follow in the event the debt ceiling is reached are as follows:

1. **Payments.** You should delay payments to vendors for goods and services rendered or progress payments due. You should also delay payments to beneficiaries. This payment freeze applies equally to defense and civilian accounts. Your agency should process checks or other forms of payment in the usual fashion, but no employee (including disbursing officers) should mail the checks or otherwise make payments in any form -- including, but not limited to, wire transfer instructions -- until a debt ceiling measure has been enacted. Furthermore, beginning December 12, 1985, you should not certify any vouchers for payment to the Treasury or Federal disbursing offices. This, of course, means that no government payroll checks may be issued on December 12th.

2. **Grants.** Similarly, you should delay further payments to organizations and institutions under grant agreements -- including State and local governments, and non-profit institutions.

3. **New contracts.** Unless necessary to continue services to protect life and property or provide for the national security (including the conduct of foreign relations essential to the national security), your agency should not enter into any new contracts until a debt ceiling measure has been enacted. In determining the character of any proposed activity or contract, you should refer to your contingency plans covering an appropriations hiatus to decide which programs are considered necessary to protect life and property. Where the answer is not clear, no new obligation should be assumed unless approved by OMB or until the situation has been resolved by enactment of a new debt ceiling.

4. Hiring. Your agency must not hire any new personnel until a debt ceiling measure has been enacted.

5. Instructions to current employees. Notwithstanding the failure of Congress to adopt a debt ceiling measure, you should continue to function in accordance with a continuing resolution or an appropriations act. As noted previously, you should continue operations. You should tell your employees they are expected to continue to report for work each day in the ordinary fashion, but a liberal policy may be adopted for granting annual leave to persons not deemed to be performing essential functions.

6. Lawsuits. If you or your agency are sued as a result of the non-payment of checks outstanding, you should immediately notify the Department of Justice, c/o Dennis Linder, Civil Division (telephone: 202-633-3314 or 3301).

II. Congress Has Not Enacted a Continuing Resolution or Appropriations Act for Your Agency, But Has Enacted an Increase in the Debt Ceiling.

The current continuing resolution will expire at 12:01 a.m., Friday December 13th. If no appropriations or a further continuing resolution covering your agency is signed before then, this situation would present what the Government has experienced before and require initiation of the "shut-down" procedures pursuant to plans previously prepared and described in OMB memoranda dated August 28, 1980 and November 17, 1981 (copies of which previously have been provided your agency). These plans should be implemented as of the opening of business on December 13th. In particular, your employees should be instructed to report for work on that morning to complete shut-down activities. Any questions regarding these instructions should be directed to your OMB budget examiner.

III. Congress Has Not Enacted a Continuing Resolution or Appropriations Act for Your Agency, Nor Has It Enacted an Increase in the Debt Ceiling.

In this most unusual situation, where Congress fails to enact appropriations legislation and fails to raise the debt ceiling, you must follow the procedures listed in both Sections I and II of this memorandum. In other words, you must begin the orderly closing down of your agency's operations. Within that process

payments should be made as authorized under the Attorney General's opinions concerning agency operations in a lapse of appropriations. If this situation occurs, more specific instructions may be provided in writing or at a meeting called for this purpose.

Within the guidance established by this memorandum, you should make determinations that are necessary to operate your agency during an appropriations and debt ceiling hiatus, and to do so pursuant to normal agency processes for the resolution of issues of law and policy. Questions that cannot be determined by your agency should be addressed to your OMB budget examiner or Jack Carley, General Counsel of OMB. All unresolved questions relating to the construction of the Antideficiency Act should be referred to the Office of Legal Counsel at the Department of Justice.

We appreciate your continued cooperation and assistance under these most trying circumstances, and we sincerely hope that Congress will take appropriate steps to avoid these counter-productive and unnecessary situations.